

## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in nine parts as described below:

Part I: Administrative Fee Reserve. This part describes the PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the PHA. This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the PHA will follow.

Part VII: Reporting and Record Keeping for Children with Elevated Blood Lead Level. This part describes the PHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated blood lead levels that are less than six years of age and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the PHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, and stalking; and maintaining the confidentiality of information obtained from victims.

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### **PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

The PHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNA account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with 24 CFR 982.155(b)(1).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNA Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

#### MSHDA Policy

Expenditures from the UNP Account will be made in accordance with all applicable federal requirements. Expenditures will not exceed \$44,999 per occurrence without the prior approval of MSHDA’s Board of Directors.

### **PART II: SETTING PROGRAM STANDARDS AND SCHEDULES**

#### **16-II.A. OVERVIEW**

Although many of the program’s requirements are established centrally by HUD, the HCV program’s regulations recognize that some flexibility is required to allow the PHA to adapt the program to local conditions. This part discusses how the PHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family’s payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

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### MSHDA Policy

Copies of the payment standard and utility allowance schedules are available for review in MSHDA's offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

MSHDA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

Establishing and updating the PHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-1. G.).

### **16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]**

The payment standard sets the maximum subsidy payment a family can receive from the PHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the PHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

#### **Updating Payment Standards**

When HUD updates its FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the PHA to make further adjustments if it determines that rent burdens for assisted families in the PHA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

### MSHDA Policy

MSHDA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" MSHDA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** MSHDA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. MSHDA will compare the number of families who

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could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, MSHDA will consider increasing the payment standard. In evaluating rent burdens, MSHDA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** MSHDA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

**Changes in Rent to Owner:** MSHDA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

**Unit Availability:** MSHDA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** MSHDA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Effective dates of changes to payment standard amounts will be determined at the time of the update. MSHDA will always ensure the payment standards will be within the basic range.

### **Exception Payment Standards [982.503(c)(5), Notice PIH 2018-01]**

A non-SAFMR PHA may establish an exception payment standard for a zip code area of up to and including 110 percent of the SAFMR determined by HUD for that zip code area. Regardless of the level of the exception payment standard compared to the metropolitan area FMRs (MAFMRs), the PHA must send an email to [SAFMRs@hud.gov](mailto:SAFMRs@hud.gov) to notify HUD that it has adopted an exception payment standard based on the SAFMR. A PHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area, for both its HCV, and if applicable, its PBV program. For the PBV program, this means that the rent to owner may not exceed the new exception payment standard amount, provided the rent is still reasonable. A PHA that adopts an exception payment standard area must revise its briefing materials to make families aware of the exception payment standard and the area that it covers.

### **Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01]**

PHAs that administer vouchers in a metropolitan area where the adoption of small area FMRs (SAFMRs) is not required may request approval from HUD to voluntarily adopt SAFMRs. SAFMRs may be voluntarily adopted for one or more zip code areas.

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### MSHDA Policy

MSHDA may elect to voluntarily adopt the use of Small Area Fair Market Rents (SAFMRs) in an entire metropolitan area or specified zip codes as allowed by HUD. In doing so, MSHDA will consider whether to apply SAFMRs to the PBV program within a designated metropolitan area or specified zip code. MSHDA will follow the requirements outlined in PIH Notice 2018-01 and the HUD published Implementation Guidebook to properly implement SAFMRs.

### **Unit-by-Unit Exceptions [24 CFR 982.503, 24 CFR 982.505(d), Notice PIH 2010-26]**

Unit-by-unit exceptions to the PHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the PHA's payment standard schedule.

When needed as a reasonable accommodation, the PHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

### MSHDA Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, MSHDA must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

### **"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, the PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the PHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, the PHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and

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- The PHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

### **Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]**

The PHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

### **16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. The PHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the PHA about establishing utility allowance schedules.

Shared utilities are not permitted. The owner of an assisted unit may not bill HCV participants for master-metered utilities unless the building is equipped with sub-meters that allow the owner to invoice the tenants of a building or complex based on actual consumption and utility rates.

#### **MSHDA Policy**

In certain circumstances, MSHDA may allow owners of multifamily properties to utilize a Ratio Utility Billing System (RUBS) for tenant-paid utilities. For more information on shared utilities and the RUBS system and requirements, please see Chapter 9 of MSHDA's Administrative Plan.

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### Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

#### MSHDA Policy

MSHDA has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before MSHDA will apply this allowance to a family's rent and subsidy calculations.

The air-conditioning allowance shall be applied when the following three criteria are met:

1. The participant is responsible for payment of the air conditioning utility as indicated within the HUD 52641 and the HUD 52517 (or MSHDA 51B from prior transaction);
2. Central air-conditioning or a portable air conditioner must be present in the unit; and
3. The windows are designed not to open (e.g., high rise) or Reasonable Accommodation has been approved.

### Reasonable Accommodation

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### Utility Allowance Revisions

The PHA must review its schedule of utility allowances each year and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The PHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

## PART III: INFORMAL REVIEWS AND HEARINGS

### 16-III.A. OVERVIEW

Both applicants and participants have the right to appeal certain decisions of the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of PHA decisions is called the "informal review." For participants (or applicants denied admission because of citizenship issues), the appeal process is

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called an “informal hearing.” PHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for but has not yet been admitted to the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554]. *Federal Register* 60, no. 127 (3 July 1995): 34690].

#### **Decisions Subject to Informal Review [24 CFR 982.554(a) and (c)]**

The PHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the PHA waiting list;
- Denying or withdrawing a voucher;
- Refusing to enter into a HAP contract or approve a lease;
- Refusing to process or provide assistance under portability procedures.

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the PHA;
- General policy issues or class grievances;
- A determination of the family unit size under the PHA subsidy standards;
- A PHA determination not to approve an extension of a voucher term;
- A PHA determination not to grant approval of the tenancy;
- A PHA determination that the unit is not in compliance with the HQS;
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition.

#### **MSHDA Policy**

MSHDA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes denying listing on the MSHDA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

#### **Notice to the Applicant [24 CFR 982.554(a)]**

The PHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA decision and must also state that the applicant may request an informal review of the decision, and how to obtain it.



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### Scheduling an Informal Review

#### MSHDA Policy

A request for an informal review must be made in writing and delivered to MSHDA or the MSHDA Housing Agent either in person, by fax, or by first class mail, or by e-mail, by the close of the business, no later than 15-business days from the date of the Program Denial Notice (MSHDA 1634d).

To be eligible for the Informal Review, the applicant's completed written request for an informal review must be received by MSHDA within 15-business days from the MSHDA 1634d notice date except as noted below:

- The Informal Review Request (MSHDA 97a) is the preferred way for an applicant to request an informal review. However, any written request for an informal review or inquiry regarding the decision received within the 15-business day period will meet the requirements of an informal review request.
- If a verbal request from the applicant is received within the 15-business day deadline, the file will be noted with the date and details of the request. The applicant must be advised to submit in a written request or the MSHDA 97a by the deadline.

Within 5 business days of receipt of request for an informal review, MSHDA will send confirmation of receipt of the request. MSHDA will use the last known address and contact information provided by the requesting individual to schedule the informal review. If the requesting individual fails to respond, MSHDA may deem the request abandoned.

#### **Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of MSHDA.

#### **Remote Informal Reviews [Notice PIH 2020-32]**

There is no requirement that informal reviews be conducted in-person and, as such, HUD allows PHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

#### MSHDA Policy

The informal review will be conducted remotely by telephone unless an in-person review is required as a result of an approved reasonable accommodation or as a result of an accessibility need for a person with Limited English Proficiency (LEP).

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### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal reviews.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal review process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal review is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote informal review, and the PHA should consider whether postponing the remote informal review to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal reviews, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal reviews.

#### **MSHDA Policy**

Although MSHDA will not request nor require that individuals with disabilities provided their own auxiliary aids or services for remote informal reviews, individuals are welcome to use and will not be prohibited from using their own auxiliary aids or services if preferred and sufficient to provide accessibility. MSHDA may require written confirmation that individuals have granted their aides or advocates permission to view the individual's personally identifying and sensitive information.

### **Conducting Remote Informal Reviews**

The PHA must ensure that the lack of technology or inability to use technology for remote informal reviews does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal review and, if the family does not have the proper technology to

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fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA must ensure that the applicant has the right to hear and be heard. All PHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

### MSHDA Policy

MSHDA will conduct remote informal reviews via telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal review will be rescheduled.

At least five business days prior to scheduling the remote review, MSHDA will provide the family with the conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify MSHDA of any known barriers. MSHDA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

Documents will be sent shared electronically if the applicant has provided an email address with their informal review request. If no email address has been provided, MSHDA will send all documents by first class mail.

MSHDA must be in receipt, by mail or email, of any family provided documents directly relevant to the informal review at least 48 hours before the scheduled review.

MSHDA will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP. MSHDA may require written confirmation that individuals have granted their aides or advocates permission to view the individual's personally identifying and sensitive information.

MSHDA staff is responsible for conducting the review and making the final decision as to whether assistance should be granted or denied. The MSHDA staff member who conducts the review and makes the final decision must not have participated in the decision to deny the applicant.

MSHDA staff may present evidence and/or witness testimony used for determining the denial.

The applicant will be given the opportunity to present evidence and/or witness testimony during the Review process. The applicant may designate an attorney or other adult representative to assist them at their own expense.

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### **Informal Review Decision [24 CFR 982.554(b)]**

The PHA must notify the applicant of the PHA's final decision, including a brief statement of the reasons for the final decision.

#### MSHDA Policy

In rendering a decision, MSHDA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice to the family.

The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. MSHDA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, MSHDA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, MSHDA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

MSHDA will notify the applicant of the final decision in writing, including a statement explaining the reason(s) for the decision. The notice will be mailed or emailed within 15 business days of the informal review, to the applicant and his or her representative, if any.

If the decision to deny is overturned as a result of the informal review, the applicant will receive notice, and processing for admission will resume.

If the family fails to participate in their informal review, the denial of admission will stand, and the family will be so notified.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant. A participant family is defined as an individual or family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of an informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the participant family's head of household to request an informal hearing has elapsed, and any requested hearing has been completed.

#### MSHDA Policy

In decisions that are subject to an informal hearing, and pertain to a determination to terminate assistance, MSHDA is not permitted to stop HAP (unless a Breach of the HAP Contract by the landlord has occurred) and/or UAP under an outstanding HAP contract

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until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. With the exception to an abandoned unit and/or eviction, if a request for an informal hearing has been received by MSHDA within the MSHDA required timeframe, HAP and UAP will continue to be paid under the outstanding HAP contract until a Final Decision and Order (FDO) is issued by the MSHDA Office of Legal Affairs.

MSHDA will not allow family initiated moves during the informal hearing process. At the discretion of MSHDA, a family may be granted the ability to move within MSHDA's jurisdiction during the informal hearing process if MSHDA deems the move to be involuntary. An involuntary move includes, but is not limited to, the following circumstances:

1. Landlord caused abatements where the move process is triggered under Chapter 8;
2. VAWA is triggered under Chapter 16;
3. The landlord opts out of the HAP Contract;
4. The foreclosure process is completed, and the move process is triggered under Chapter 13;
5. The landlord has breached the HAP contract;
6. Required moves for a PBV participant as outlined in Chapter 17.

Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

### **Decisions Subject to Informal Hearing**

Circumstances for which the PHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the participant family's annual or adjusted income, and the use of such income to compute the housing assistance payment;
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule;
- A determination of the participant family unit size under the PHA's subsidy standards;
- A determination to terminate assistance for a participant family because of the participant family's actions or failure to act;
- A determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules;

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- A determination to terminate a participant family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)];
- A determination to deny admission based on an unfavorable history that may be the result of domestic violence, dating violence, or stalking.

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the PHA;
- General policy issues or class grievances;
- Establishment of the PHA schedule of utility allowances for families in the program;
- A PHA determination not to approve an extension of a voucher term;
- A PHA determination not to approve a unit or tenancy;
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS;
- A PHA determination that the unit is not in accordance with HQS because of family size;
- A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract.

### MSHDA Policy

MSHDA will offer participants the opportunity for an informal hearing only when required to by the regulations.

### **Remote Informal Hearings [Notice PIH 2020-32]**

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

### MSHDA Policy

Informal Hearings will be conducted remotely by telephone unless special circumstances warrant an in-person hearing. If the program participant does not have the means to participate in the manner prescribed, on receipt of timely notice, MSHDA will attempt to make alternative arrangements. See *Informal Hearing Procedures* below.

### **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio

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description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal hearing process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual his or her inability to participate in the remote informal hearing, and the PHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.

### MSHDA Policy

Although MSHDA will not request nor require that individuals with disabilities provide their own auxiliary aids or services for remote informal hearings, individuals are welcome to use and will not be prohibited from using their own auxiliary aids or services if preferred and sufficient to provide accessibility. MSHDA may require written confirmation that individuals have granted their aides or advocates permission to view the individual's personally identifying and sensitive information.

### **Conducting Informal Hearings Remotely**

The PHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the PHA. The PHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the PHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The PHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements and will be in

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compliance with HUD regulations at 24 CFR 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

### MSHDA Policy

MSHDA will conduct remote informal hearings via telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative may be provided promptly within a reasonable time.

MSHDA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP. MSHDA may require written confirmation that individuals have granted their aides or advocates permission to view the individual's personally identifying and sensitive

### **Informal Hearing Procedures**

#### ***Notice to the Family [24 CFR 982.555(c)]***

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

### MSHDA Policy

In cases where MSHDA makes a decision for which an informal hearing must be offered, the written notice to the family will include all of the following:

- The proposed action or decision of MSHDA.

- The specific program rules that were violated;

- The date the proposed action will take place;

- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision;

- A deadline for the family to request an informal hearing;

- To whom the hearing request should be addressed;



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A copy of MSHDA's hearing procedures.

### ***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

#### MSHDA Policy

A request for an informal hearing must be made in writing and delivered to MSHDA either in person, by electronic means, or by first class mail, by the close of the business day, no later than 15 business days from the date of MSHDA's decision to terminate assistance.

Upon receipt of the request for an informal hearing and program termination documents, MSHDA's Office of Audit, Compliance, and Fraud Investigation (ACFI) will conduct a review and/or request additional documentation. This includes a consideration of circumstances and a review of alternatives that the PHA may consider in lieu of termination, as described in Chapter 12.

If it is determined that program termination should proceed to the informal hearing process, within 5 business days of the conclusion of their review, the ACFI unit will submit a request to the Michigan Office of Administrative Hearings and Rules (MOAHR) for the hearing to be scheduled. Scheduled hearings will be conducted by MOAHR, an office independent of MSHDA, and an Administrative Law Judge (ALJ) assigned by MOAHR.

In scheduling an informal hearing, and for all subsequent communication required by the informal hearing process, MSHDA and MOAHR will use the last known address provided by the participant to schedule the informal hearing. If the participant fails to respond or appear, MSHDA will enter into the record the attempts to contact the participant and request a default to be entered, as described below.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities, by submitting a rescheduling request to MSHDA and MOAHR. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, MSHDA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear for the scheduled hearing time, and did not reschedule the hearing in advance, MSHDA will request that the ALJ hearing the matter enter a default against the family for failure to appear. Any subsequent request to set aside that default, and conduct a new hearing, must be timely sent to both the ALJ and MSHDA and must demonstrate good cause for the failure to appear, or the need to set aside the default as a reasonable accommodation for a person with disabilities. MSHDA may agree with the

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request to set aside the default and reschedule a hearing, upon a showing of good cause or reasonable accommodation, but the decision will be made by the ALJ in accordance with applicable guidelines.

***Pre-Hearing Conferences:*** MSHDA staff may conduct a pre-hearing conference with a participant prior to an informal hearing, if the request for the hearing is solely to determine whether:

1. rental calculations (tenant-rent, subsidy standard, utility allowance, etc.) were completed and applied properly (non-terminations); or
2. the sole reason for termination is for the participant's failure to sign or failure to make a payment on a repayment agreement.

MSHDA staff will listen to the participant concerns and review any documentation submitted by the participant. MSHDA staff will explain the rental calculations or repayment agreement. If an error is identified by MSHDA staff during the pre-hearing conference, MSHDA staff will follow up with the Housing Agent to address the error.

The pre-hearing conference may be performed via phone, or it can be a face-to-face meeting at MSHDA's discretion. The Pre-Hearing Conference Notice will be used to schedule a pre-hearing conference.

The family may request to reschedule a pre-hearing conference for good cause or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family. Requests to reschedule a pre-hearing conference must be made to MSHDA at least 48 hours in advance of the scheduled pre-hearing conference.

The Pre-Hearing Conference Summary will be sent to the participant and Housing Agent after the pre-hearing conference. If the matter is resolved with a pre-hearing conference, the informal hearing request will be rescinded once written confirmation has been received from the participant. If the matter cannot be resolved with a pre-hearing conference, or the participant does not send in written confirmation that the matters has been resolved with the pre-hearing conference process, MSHDA will proceed with the informal hearing process.

If the request for an informal hearing cannot be resolved with a pre-hearing conference, MSHDA's Auditing, Compliance and Fraud Investigation (ACFI) unit must submit the request for an informal hearing to the MOAHR for scheduling. MOAHR will schedule the hearing and notify all parties. MOAHR will schedule a telephone hearing unless circumstances warrant an in-person hearing (such as presentation of media evidence, etc.).

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The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety, or welfare of the family.

Requests to reschedule a hearing must be made to MOAHR at least 48 hours in advance of the scheduled hearing time. MOAHR will issue an order adjourning the hearing or denying the request.

### ***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and the PHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

#### MSHDA Policy

The family and MSHDA must mail to the other party copies of any proposed exhibits related to the hearing no later than seven (7) calendar days to the scheduled hearing date. If the participant wishes any additional documents in MSHDA's possession, they must submit a FOIA request through the MSHDA Freedom of Information Act (FOIA) Coordinator.

MSHDA must be given an opportunity to examine before the hearing any family documents that are directly relevant to the hearing. The MOAHR Notice of Hearing will advise all parties that they need to mail all documents they intend to submit during a hearing to each party no later than seven (7) calendar days in advance of the scheduled hearing. In doing so, MSHDA will mail documents to the participant at the address on file, with proof of mailing. If the participant identifies an individual/entity to represent them at the informal hearing, MSHDA will mail documents to that individual/entity at the address provided, with proof of mailing.

Documents will be shared electronically whenever possible.

### ***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

#### MSHDA Policy

If the family is being represented by legal counsel or other representation, the participant counsel/representation must file an appearance no later than ten days prior to a scheduled hearing. Upon receipt of said appearance, all communication related to the hearing shall be between MSHDA and the family's legal counsel/representation only. MSHDA may require written confirmation that participants have granted their aides or advocates permission to view the individual's personally identifying and sensitive information.

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### ***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

#### MSHDA Policy

MOAHR provides ALJ's to adjudicate MSHDA informal hearings.

### ***Attendance at an Informal Hearing***

#### MSHDA Policy

Hearings will be attended by the MOAHR assigned ALJ, the Petitioner, and MSHDA staff representative(s) and may include the following additional persons:

Respondent or Petitioner witnesses;

Respondent or Petitioner legal counsel or appointed representative;

Any other person approved by MSHDA as a reasonable accommodation for a person with a disability;

Petitioner's appointed translator;

The Head of Household must be present at the hearing regardless if he/she has appointed a representative;

MSHDA staff attorneys.

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

#### MSHDA Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### ***Evidence [24 CFR 982.555(e)(5)]***

The PHA and the family must be given the opportunity to present evidence and question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### MSHDA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing.

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### ***Hearing Officer's Decision [24 CFR 982.555(e)(6)]***

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.

#### **MSHDA Policy**

In rendering a decision, the hearing officer will address the following matters:

**PHA Notice to the Family:** The hearing officer will determine if the reasons for the PHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if MSHDA and the family were given the opportunity to examine any relevant documents in accordance with MSHDA policy.

**PHA Evidence to Support the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion, and it is not argument. The hearing officer will evaluate the facts to determine if they support MSHDA's conclusion.

**Participant Evidence to Refute the PHA Decision:** The evidence consists of the facts presented. Evidence is not conclusion, and it is not argument. The hearing officer will evaluate the facts to determine if they support participant's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will conclude if the termination of assistance is for one of the grounds specified in the HUD regulations and MSHDA policy.

The hearing officer will issue a written Proposal for Decision (PFD) to the family and MSHDA. The report will contain the following information:

#### **Hearing information:**

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of the MSHDA representative; and
- Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which

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is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a recommendation of whether these facts uphold MSHDA's decision.

**Order:** The hearing report will include a recommendation to uphold or overturn MSHDA's decision. An aggrieved party to a Proposal for Decision ("PFD") issued following an administrative hearing may file exceptions to that PFD.

Exceptions must be served within 21 calendar days of the issue date of the PFD on the (1) Director of Legal Affairs, Michigan State Housing Development Authority, 735. E. Michigan Avenue, Lansing Michigan 48909, (2) Michigan Office of Administrative Hearings and Rules, 611 W. Ottawa Building St. 2<sup>nd</sup> Floor P.O. Box 30695 Lansing, MI 48909, and (3) the opposing party.

The non-aggrieved/opposing party may file a Response to Exceptions filed by the aggrieved party. All replies must be filed within 14 calendar days after the expiration of Exceptions filing date and must be served on the (1) Director of Legal Affairs, Michigan State Housing Development Authority, 735. E. Michigan Avenue, Lansing Michigan 48909, (2) Michigan Office of Administrative Hearings and Rules, 611 W. Ottawa Building St. 2<sup>nd</sup> Floor P.O. Box 30695 Lansing, MI 48909, and (3) the aggrieved party who filed Exceptions.

All Exceptions and Response to Exceptions must include Proof of Service. Proof of Service requires a copy of the exceptions or response and any supporting documents be sent to all parties and or attorneys of record.

### ***Procedures for Rehearing or Further Hearing***

#### **MSHDA Policy**

The MOAHR (ALJ) hearing officer may ask the family or MSHDA for additional information and/or might adjourn the hearing in order to reconvene at a later date before reaching a decision.

### ***Issuance of Decision [24 CFR 982.555(e)(6)]***

A copy of the hearing decision must be furnished promptly to the family.

#### **MSHDA Policy**

The hearing officer will mail a "Proposal for Decision" to MSHDA and to the participant on the same day. This notice will be sent by first-class mail. The participant will be

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mailed the original “Proposal for Decision” and a copy of the proof of mailing. A copy of the “Proposal for Decision” will be maintained in MSHDA’s file.

### ***Effect of Final Decision* [24 CFR 982.555(f)]**

The PHA is not bound by the decision of the hearing officer for matters in which the PHA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to Federal, State or local laws.

If the PHA determines it is not bound by the hearing officer’s decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

### **MSHDA Policy**

MSHDA will mail a “Final Decision and Order” (FDO) including the hearing officer’s report, to the participant and their representative. The participant will be sent the FDO with affidavit of mailing enclosed via first class mail with postage pre-paid. A copy of the FDO will be maintained in MSHDA’s file. In the event the FDO upholds the termination, HAP will cease effective in the month that the FDO is issued.

### **16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the PHA hearing is pending, but assistance to an applicant may be delayed pending the completion of an informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].

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- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the PHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

### **USCIS Appeal Process [24 CFR 5.514(e)]**

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

#### MSHDA Policy

MSHDA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide MSHDA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

#### MSHDA Policy

MSHDA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

### **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.



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### ***Informal Hearing Officer***

The PHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

### ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

#### **MSHDA Policy**

The family and MSHDA must provide to the other party copies of any documents related to the hearing no later than seven (7) calendar days prior to the scheduled hearing date.

MSHDA must be given an opportunity to examine before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the hearing appointment notice will automatically include a statement to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant or the participant's legal counsel must make the documents available no later than 5 business days prior to the scheduled hearing date.

If the family is being represented by legal counsel, MSHDA shall be advised of the name and contact information of said legal counsel no later than 5 business days prior to the hearing. Upon receipt of said contact information all communication related to the hearing shall be between MSHDA and the family's legal counsel.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to request an interpreter. Upon request, MSHDA will provide competent interpretation services, free of charge.

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### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. The PHA may but is not required to provide a transcript of the hearing.

#### **MSHDA Policy**

MSHDA will not provide a transcript of an audio taped hearing.

### ***Hearing Decision***

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 15 business days of the date of an informal hearing. The decision must state the basis for the decision.

### **Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

### **Retention of Documents [24 CFR 5.514(h)]**

The PHA must retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the USCIS appeal or the PHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

## **Chapter 16**

### **PART IV: OWNER OR FAMILY DEBTS TO THE PHA**

#### **16-IV.A. OVERVIEW**

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the PHA's policies for recovery of monies owed to the PHA by families or owners.

##### MSHDA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, MSHDA holds the owner or participant liable to return any overpayments to MSHDA.

In general, MSHDA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments. Instances in which MSHDA may elect not to enter into a repayment agreement with an owner or participant include but are not limited to: criminal prosecutions, multiple program violations, immediate terminations due to health and safety concerns, etc. When MSHDA elects not to enter into a repayment agreement with an owner or participant, MSHDA will utilize other collection efforts as outlined below.

When an owner or participant refuses to repay monies owed to MSHDA, MSHDA will refer the debt to the Michigan Department of Treasury for collections.

MSHDA may utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies

- Small claims court

- Civil lawsuit

- Criminal restitution

#### **16-IV.B. REPAYMENT POLICY**

##### **Owner Debts to the PHA**

##### MSHDA Policy

MSHDA is required to determine the amount of overpaid subsidy owed for all years that MSHDA has documentation of overpayment. All overpaid rental subsidy must be repaid to MSHDA.

Any amount due to MSHDA by an owner must be repaid by the owner within 30 days of MSHDA determination of the debt.

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If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, MSHDA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments MSHDA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by MSHDA. If no repayment agreement is offered and/or negotiated, continued collection efforts will be made including the referral of the debt for collection.

If the owner refuses to repay the debt, refused to enter into a repayment agreement, if offered, or breaches a repayment agreement, MSHDA may exercise its right to ban the owner from future participation in the program and refer the debt for collection.

### Family Debts to the PHA

#### MSHDA Policy

MSHDA is required to determine the amount of overpaid subsidy owed for all years that MSHDA has documentation of family unreported/under-reported income. All overpaid rental and/or utility subsidy must be repaid to MSHDA.

Any amount owed to MSHDA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the PHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, MSHDA will terminate assistance in accordance with the policies in Chapter 12 and refer the debt to the Michigan Department of Treasury for collection.

### Repayment Agreement [24 CFR 792.103]

The term *repayment agreement* refers to a formal written document signed by a participant or owner and provided to the PHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

#### MSHDA Policy

MSHDA staff will notify the participant of the amount and terms of the repayment agreement in the MSHDA 103. MSHDA staff will notify the participant of the ramifications of failure to comply with the terms of the repayment agreement in the MSHDA 103. The participant is required to sign the Repayment Agreement (MSHDA 103) within 15 business days of notification to legally execute the Repayment Agreement and avoid program termination. If the participant does not sign the Repayment Agreement, MSHDA will proceed with termination. If a review is requested and the Repayment Agreement is not signed, MSHDA will proceed with termination and coordinate the review.

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The participant will continue to receive rental assistance, as allowable under SOP and HUD regulations, as long as they adhere to the terms and conditions of the executed Repayment Agreement.

### General Repayment Agreement Guidelines for Families

#### *Payment Thresholds*

Notice PIH 2017-12 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2017-12 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

#### MSHDA Policy

MSHDA has established the following thresholds for repayment of debts:

The length of the repayment agreement cannot exceed thirty-six months unless the family provides evidence of a hardship.

A hardship is defined as:

- Family income has decreased due to a loss of income. Tenant must provide verification of the decrease of income.
- Death has occurred in the family. Family must describe how the death has created a financial hardship such as funeral-related expenses for a member of the household or the loss of the family member’s income. The tenant must provide verification of the death and relationship.

For approved hardship cases, the maximum repayment agreement cannot exceed sixty months. If a family can provide evidence satisfactory to MSHDA that the threshold applicable to the family’s debt would impose an undue hardship, MSHDA may, in its sole discretion, approve a lower monthly payment amount; however, under no circumstances can the monthly payment amount be less than \$100. In making its determination, MSHDA will consider all relevant information, including the following:

The amount owed by the family to MSHDA;

The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control;

The family’s current and potential income and expenses;

The family’s current family share, as calculated under 24 CFR 982.515;

The family’s history of meeting its financial responsibilities.

The minimum monthly payment amount is \$25.

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For small debts (less than \$50), the Repayment Agreement will be executed so that participants pay the entire amount in one lump sum. For example, if a participant owes \$45, a lump sum Repayment Agreement must be executed.

### ***Execution of the Agreement***

#### **MSHDA Policy**

Any repayment agreement between MSHDA and a family must be signed and dated by MSHDA and by the head of household and spouse/co-head (if applicable).

### ***Due Dates***

#### **MSHDA Policy**

The initial payment is not required to be mailed with the Repayment Agreement.

All payments are due by the close of business on the 1<sup>st</sup> day of the month. If the 1<sup>st</sup> does not fall on a business day, the due date is the close of business on the first business day after the 1<sup>st</sup>.

If the participant sends MSHDA Finance more than the monthly payment due, MSHDA Finance will count this money as a prepayment towards the next monthly payment due unless the participant submits a request. The only other option is to enter the additional funds as a lump sum to reduce the full balance remaining on the repayment agreement.

### ***Late or Missed Payments***

#### **MSHDA Policy**

When a participant becomes one month in arrears (including arrearages due to partial payments) on the repayment agreement, MSHDA will send the family a delinquency notice giving the family 30 calendar days to bring the arrearage current. If the arrearage is not brought current by the due date of the first delinquency notice, a final delinquency notice will be sent to the participant. If the arrearage is not brought current by the due date on the final delinquency notice, it will be considered a breach of the agreement and MSHDA will terminate assistance in accordance with the policies in Chapter 12.

Inactive Participant: If a payment is not received by the end of the business day on the date due MSHDA will send the family a delinquency notice giving the family 30 calendar days to bring the account current. If the payment is not received by the due date of the first delinquency notice, MSHDA will refer the debt to the Michigan Department of Treasury for collection. A 20% penalty may be added by Treasury to the debt to cover the cost of collection services.

### ***No Offer of Repayment Agreement***

#### **MSHDA Policy**

MSHDA generally will not enter into a separate repayment agreement with a family if there is already a repayment agreement in place with the family. MSHDA may establish a new repayment agreement combining the original debt with the new debt. The new

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repayment agreement will be considered a second repayment agreement and all amounts and timelines will be established as outlined in SOP.

Repayment agreements will be limited to two per family for the life of the voucher.

### **Repayment Agreements Involving Improper Payments**

Notice PIH 2012-17 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases

#### MSHDA Policy

MSHDA will limit renegotiation of the participant's Repayment Agreement to one renegotiation during the term of a Repayment Agreement. Repayment Agreements will be renegotiated in compliance with MSHDA's Repayment Agreement policies as outlined in this Chapter.

The participant must not be more than three (3) monthly payments delinquent on the current repayment agreement and demonstrate a financial hardship (decrease in income or decrease in subsidy) or other hardship in order to be eligible for a renegotiation.

## **PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

### **[24 CFR 985]**

#### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].

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- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

### **16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]**

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if the PHA elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR 985.105].

Failure of a PHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

A PHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the PHA’s SEMAP certification, HUD will rate the PHA’s performance under each SEMAP indicator in accordance with program requirements.

### **HUD Verification Method**

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The PHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

### **16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]**

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.



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A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor and will not be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b> <b>Maximum Score: 15</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li><li>• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 2: Rent reasonableness</b> <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units</li><li>• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 3: Determination of adjusted income</b> <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"><li>• This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.</li><li>• Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.</li></ul>
<p><b>Indicator 4: Utility allowance schedule</b> <b>Maximum Score: 5</b></p> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.</li><li>• Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.</li></ul>

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### **Indicator 5: HQS quality control inspections**

#### **Maximum Score: 5**

- This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control reinspections were completed, according to the PHA's certification.

### **Indicator 6: HQS enforcement**

#### **Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA's certification.

### **Indicator 7: Expanding housing opportunities**

#### **Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the PHA's certification.

### **Indicator 8: FMR limit and payment standards**

#### **Maximum Points: 5 points**

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.

### **Indicator 9: Annual reexaminations**

#### **Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

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### **Indicator 10: Correct tenant rent calculations**

#### **Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

### **Indicator 11: Pre-contract HQS inspections**

#### **Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

### **Indicator 12: Annual HQS inspections**

#### **Maximum Points: 10**

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

### **Indicator 13: Lease-up**

#### **Maximum Points: 20 points**

- This indicator shows whether the PHA enters HAP contracts for at least 98 percent of the number of the PHA's baseline voucher units in the ACC for the calendar year ending on or before the PHA's fiscal year, or whether the PHA has expensed at least 98 percent of its allocated budget authority for the same calendar year. The PHA can receive 15 points if 95 to 97 percent of the vouchers are leased or budget authority is utilized.
- Points are based on utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.

### **Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances**

#### **Maximum Points: 10**

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

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### **Success Rate of Voucher Holders**

#### **Maximum Points: 5**

- Only applies to PHAs that have received approval to establish success rate payment standard amounts and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

### **Deconcentration Bonus Indicator**

#### **Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50<sup>th</sup> percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50<sup>th</sup> percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

The PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-VI.B. RECORD RETENTION [24 CFR 982.158]**

During the term of each assisted lease, and for at least three years thereafter, the PHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the PHA must keep the following records for at least three years:

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- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B;
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.
- Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

The PHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under the PHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

### 16-VI.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

#### MSHDA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized MSHDA staff and contracted agents.

MSHDA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff and contracted agents will result in disciplinary action.

#### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in

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compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g., electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

#### MSHDA Policy

Prior to utilizing HUD's EIV system, MSHDA will adopt and implement EIV security procedures required by HUD.

### **Criminal Records**

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information or is obtained by a PHA other than under 24 CFR 5.905.

### **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

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### MSHDA Policy

When documents are received containing a person's diagnosis or treatment for a disability, a replacement document will be prepared for the participant file removing this information. The original document will be destroyed.

### **Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see section 16-IX.E.

### **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL**

#### **16-VII.A. OVERVIEW**

The PHA has certain responsibilities relative to children with elevated blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the PHA is subject to.

#### **16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e); Notice PIH 2017-13]**

The owner must report the name and address of a child identified as having an elevated blood lead level to the public health department within five business days of being so notified by any other medical health care professional. The owner must also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days. The PHA may collaborate with the owner on the notification process, such as by agreeing with the owner to provide the required notifications on the owner's behalf.

### MSHDA Policy

Upon notification by the owner or any other medical health care professional, MSHDA will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days.

Upon notification by the owner or any other medical health care professional, MSHDA will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

#### **16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

At least quarterly, the PHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an elevated blood lead level.

If the PHA obtains names and addresses of elevated blood lead level children from the public health department(s), the PHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a

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procedure. If a match occurs, the PHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

### MSHDA Policy

The public health department(s) has stated they wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, MSHDA is providing such a report.

## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.315(e)(1) and 982.454]. If a PHA denies a family a portability move based on insufficient funding, the PHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. Insufficient funding may also impact the PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-VIII.B. METHODOLOGY**

#### MSHDA Policy

MSHDA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing MSHDA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, MSHDA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if MSHDA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, MSHDA will be considered to have insufficient funding.



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### PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

#### 16-IX.A. OVERVIEW

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking”; 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, or Stalking”; and 12-II.F, “Termination Notice.”

#### 16-IX.B. DEFINITIONS [24 CFR 5.2003, 42 USC 13925]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or

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Any other individual, tenant or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.

- The term *sexual assault* means:

Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent.

- The term *stalking* means:

To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

### 16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]

#### **Notification to Public**

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

#### **MSHDA Policy**

MSHDA will post the following information regarding VAWA on its website. It will also make the information readily available to anyone who requests it.

A notice of the occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (see Notice to Housing Choice Applicants/Tenants regarding VAWA (MSHDA 1631) and Notice to HCV Owners and Managers (MSHDA 1632))

The definitions of *domestic violence*, *dating violence*, sexual assault, and *stalking* provided in VAWA (included in MSHDA 1631 and MSHDA 1632).)

An explanation of the documentation that MSHDA may require from an individual who claims the protections provided by VAWA (included in MSHDA 1631 and MSHDA 1632)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation

A copy of the MSHDA's emergency transfer plan (Exhibit 16-1)

A copy of HUD's Emergency transfer request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (MSHDA 1631 and MSHDA 1632)

Contact information for local victim advocacy groups or service providers.

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Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

### **Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]**

PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

#### MSHDA Policy

MSHDA will include information about VAWA in all notices of denial of assistance, as provided in chapter 3-III.G. MSHDA will also include information about VAWA in notices of termination of assistance, as provided in chapter 12-II.F.

MSHDA will provide all participants with information about VAWA at the time of admission, as provided in chapter 5-I.B.

The information about VAWA provided to applicants and participants will consist of the MSHDA 1631 and the HUD-5382

The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the PHA make alternative delivery arrangements that will not put the victim at risk.

#### MSHDA Policy

Whenever MSHDA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, MSHDA may decide not to send mail regarding VAWA protections to the victim's unit if MSHDA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, MSHDA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

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### Notification to Owners and Managers [24 CFR 5.2005(a)(2)]

While PHAs are no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, MSHDA may still choose to inform them.

#### MSHDA Policy

MSHDA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program.

The VAWA information provided to owners will consist of the Notice to HCV Owners and Managers Regarding VAWA (MSHDA 1632) and the HUD-5382 and Alternate Documentation.

### 16-IX.D. DOCUMENTATION [24 CFR 5.2007]

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional, or a medical professional. The person signing the documentation must attest under penalty of perjury to the person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The PHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [VAWA final rule].

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### MSHDA Policy

Any request for documentation of domestic violence, dating violence, sexual assault, or stalking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

MSHDA may, in its discretion, extend the deadline for 10 business days. Any extension granted by MSHDA will be in writing. In determining whether to extend the deadline, MSHDA will consider factors that may contribute to the victim's inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to address health or safety issues.

Once the victim provides documentation, MSHDA will acknowledge receipt of the documentation within 10 business days.

### **Conflicting Documentation [24 CFR 5.2007(b)(2)]**

In cases where the PHA receives certification documents containing conflicting information (for example, from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator), the PHA may require the submission of additional documentation as allowed under 24 CFR 5.007(b)(1)(ii), statement of professional third-party, (iii), court or administrative records, or (iv), statements or other evidence to be provided by the applicant or tenant. If the conflicting information involves two or more household members claiming to be the victim of the other, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3).

The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].

The PHA must honor any court orders issued to protect the victim or to address the distribution of property.

### MSHDA Policy

If presented with conflicting certification documents from members of the same household, MSHDA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007 and by following any HUD guidance on how such determinations should be made. The family will have 30 calendar days from the date of request by MSHDA to provide this documentation.

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If presented with documentation that contains information that conflicts with existing information already known to MSHDA, MSHDA may request third-party documentation in order to make a determination. Individuals will have 30 calendar days to return the third-party documentation to MSHDA.

If MSHDA does not receive third-party documentation within the required timeframe (and any extensions) MSHDA will deny VAWA protections and will notify the applicant or tenant in writing of the denial.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(b)(3)]**

The PHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

#### MSHDA Policy

If MSHDA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, or stalking, MSHDA will document acceptance of the statement or evidence in the individual's file.

### **Failure to Provide Documentation [24 CFR 5.2007(a)]**

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the PHA may allow, the PHA may deny relief for protection under VAWA.

### **16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(c)]**

All information provided to the PHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that the PHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

#### MSHDA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, MSHDA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

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### PART X. MSHDA ADMINISTRATION

#### 16-X.A. Processing Requests for Copies of HUD-50058's

Housing Agents do not process requests from Project-Based and LIHTC developments for HUD-50058s. Designated MSHDA staff will process these requests directly with the Owner.

If an HA receives a request from an Owner or Management Agent for a HUD-50058, the HA will send to the Owner or Management Agent a copy of the MSHDA 71 "Owner Information Sheet for Release of HUD-50058" with an attached MSHDA 72 "Release Form for Tenant Data Summary". Outlined below is the process for how an owner obtains a HUD-50058 from MSHDA:

- 1) The Participant and Owner must complete the MSHDA 72.
- 2) MSHDA charges a \$4.00 fee for each HUD-50058 requested.
  - a. Payment will only be accepted in the form of check or money order made out to: **MSHDA**.
  - b. One check or money order should be submitted if multiple Release Forms are sent at one time.
  - c. No HUD-50058(s) will be processed without full payment.
- 3) The Owner or Management Agent will mail the MSHDA 72 along with attached payment to:

MSHDA  
Attn: RAHS-50058  
PO Box 30044  
Lansing, MI 48909
- 4) Once the completed MSHDA 72(s) and payment have been received, MSHDA will process the request for the HUD-50058(s). Generally, they are mailed within five (5) business days to the address the Owner or Management Agent has provided on the MSHDA 72(s).

#### 16.X.B Processing FOIA Requests

This process addresses how the HAs should respond when a request is received for documents or information under the Freedom of Information Act regarding the HCV Program. FOIA provides persons and entities access to certain public records. It allows individuals to make written requests for public records and requires public bodies such as MSHDA to respond to the requests within deadlines established by statute.

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### FOIA Requests:

Any written request made to MSHDA staff for documents is subject to FOIA.

### Housing Agents and Responses to FOIA Requests:

Housing Agents are independent contractors and are not subject to the FOIA. When an HA receives a written request for information or documents under FOIA, the HA must respond by letter informing the requester that:

- (a) the HA is not a public body and therefore not subject to the FOIA; and
- (b) Requests for information or documents should be addressed to the *Michigan State Housing Development Authority, 735 E. Michigan Avenue, Lansing, MI 48912, ATTN: FOIA Coordinator*. Requests can be delivered by hand, U.S. mail, overnight delivery service, FAX, or E-mail. The HA may provide the requester with the link to MSHDA's FOIA Policy at <http://www.michigan.gov/mshda/0,4641,7-141--358142--00.html>.

NOTE: When MSHDA staff and/or a HA receives a written request from a participant to view their entire participant file, this will be considered a FOIA request. If the written request is received by MSHDA staff, the request will be forwarded to the FOIA Coordinator. If an HA receives the written request, the HA will follow the process above for providing the requestor with the proper process for submitting a FOIA request.

### Housing Agents and Responses for Requests for Documents:

The HA must respond to the following document requests within 10 business days of the receipt of a written request:

1. A request from an owner for blank forms when the forms are necessary for the owner to participate in the Housing Choice Voucher (HCV) Program.
2. A request from a participant to provide copies of HCV forms that the participant has signed or provided within the last two years such as a voucher, lease, or amendment to a lease. Such a request is deemed to be part of the process of administering the HCV Program and the participant is entitled to a copy of a form they have signed and/or provided. The key fact here is that the participant has provided the documents that are being requested. The HA should not,
3. however, provide such documents to any party other than the participant, unless the participant has provided the HA with an authorization to release information that provides the name of the party and the documents to be released.
  - a. Example 1: if an owner requests documents signed by the participant (other than the lease), the HA should inform the requesting owner in writing that (a) the HA is not able to accept FOIA requests and (b) such requests should be addressed to MSHDA.



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- b. Example 2: if a legal aid attorney requests documents signed by or provided by the participant, the HA can only release the documents if an authorization to release information is signed by the participant providing the name of the party and the documents to be released.
- 4. Upon request, the HA may also provide the most recent two years of following documents to the participant as they are common forms routinely provided to the participant:
  - a. Adjustment Notification – MSHDA 34
  - b. Notice of Inspection – MSHDA 104
  - c. Inspection Deficiency Notice – MSHDA 105
  - d. Inspection Stop Payment Notice – MSHDA 106
  - e. Inspection Checklist – HUD 52580
  - f. Program Termination – MSHDA 1634b
  - g. Contract Termination – MSHDA 95
- 5. Provide a form or pamphlet to a participant when required under HCV regulations or State law. Again, providing such documents is part of the process of administering the HCV Program. Moreover, the HCV Program and/or State law require MSHDA to provide such documents.

All other requests for documentation and information are considered to be a FOIA request. The HA will follow the process outlined above for providing the requestor the proper information for submitting a request.

### **16.X.C. Responses to Subpoenas**

A HA must notify MSHDA if they receive a subpoena. It is recommended that the HA consult with their legal counsel, but this is at their own discretion and expense. The HA must receive MSHDA's consent prior to disclosing any information or records.

A subpoena received by a MSHDA staff person must be immediately forwarded to the Director of Legal Affairs.